

**BOARD OF ZONING APPEALS
MINUTES
MARCH 23, 2004**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on March 23, 2004, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

DWIGHT GREENLEE, RANDY PHILLIPS, JOHN ROGERS, BICKLEY FOSTER,
ERMA MARKHAM.

The following Board members were absent:

JAMES RUANE, and JAMES SKELTON.

SHARON DICKGRAFE – Law Department present.

HERB SHANER - Office of Central Inspection present.

The following Planning Department staff members were present:

DALE MILLER Secretary.

SCOTT KNEBEL Assistant Secretary.

ROSE SIMMERING, Recording Secretary.

GREENLEE moves, MARKHAM seconds to appoint Randy Phillips to Chair this meeting since James Ruane, Chair, and James Skelton, Vice-Chair were absent.

Motion carries 5-0.

PHILLIPS Item #1, February 24, 2004, BZA meeting minutes.

FOSTER moves, MARKHAM seconds to approve February 24, 2004, BZA meeting minutes.

Motion carries 5-0.

PHILLIPS Item 2, Case No, BZA2004-13, Request a Variance to Section III-D.6.n. of the Unified Zoning Code to permit a machine shop on property zoned “GC” General Commercial without the entire frontage of the ground floor used for office display, generally located north of 53rd Street North and east of Seneca. Applicant, Stanley and Ladene Blankenship.

KNEBEL, Planning staff Presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

SECRETARY’S REPORT

CASE NUMBER: BZA2004-00013

OWNER/APPLICANT: Stanley and Ladene Blankenship

REQUEST: Variance to Section III-D.6.n. of the Unified Zoning Code to permit a machine shop on property zoned “GC” General Commercial without the entire frontage of the ground floor used for office or display space

CURRENT ZONING: “GC” General Commercial

SITE SIZE: 2.4 Acres

LOCATION: North of 53rd Street North and east of Seneca (946 W. 53rd St. N.)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: Section IV-D.6.n. of the Unified Zoning Code states, “no building may be erected or used for any manufacturing (limited or general) or welding or machine shop use in the GC district unless the entire frontage of the ground floor along the principal street frontage is used for office space, display or wholesale or retail sales.” The subject property is zoned “GC” General Commercial and has been used as machine shop without the entire frontage used for office or display space since before Section IV-D.6.n. of the Unified Zoning Code became effective; therefore, the current use of the subject property is legally non-conforming. However, the applicant proposes to demolish the existing building and replace it with a new building (see attached site plan and elevation drawings) also to be used for a machine shop without the entire frontage used for office or display space. Since a new building will be constructed, the legal non-conforming rights will cease, and the applicant is requesting a variance to Section IV-D.6.n. of the Unified Zoning Code to permit a machine shop without the entire frontage of the ground floor used for office or display space.

The applicant submitted the attached written statement describing the need for the variance. The applicant proposes a circular drive with a loading door on the front of the building in order to prevent the need to continue the current practice of trucks backing into the property off 53rd Street North and blocking a major roadway. With the loading door on the front of the building, the entire frontage of the building cannot be used for office or display space, thus necessitating the variance.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5” Single family
SOUTH	“SF-5” Single family
EAST	“SF-5” Single family
WEST	“GC” Welding shop

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the subject property and the property immediately to the west are currently legal non-conforming welding/machine shop uses that do not provide office or display space along the entire frontage of the building. Both uses were established prior to the code requirement, and the use of the subject property will not change, only the building in which the use is conducted will change.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as a machine shop has existed on the property for decades without the entire frontage used for office or display, and there have been no apparent adverse affects on surrounding uses. Additionally, the new building will be developed in accordance with landscape and screening requirements not presently met by the subject property; therefore, the impact of the subject property on surrounding uses should be improved in comparison to the current development.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Code will constitute an unnecessary hardship upon the applicant, inasmuch as requiring compliance with the code will lead to development of unnecessary office and display space at significant cost in order for an existing legal non-conforming use to be continued in a new building on the same property.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as all setback requirements and easements will be met; therefore, no detrimental impacts to public health, safety, or welfare should occur. Additionally, the variance will allow the current practice of backing trucks into the subject property to cease, thus improving traffic safety in the area.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch the intent of Section IV-D.6.n. of the Unified Zoning Code is to soften the visual impact of manufacturing and welding/machine shop facilities. Since the subject property has been used in such a fashion for decades and the new building represents a significant improvement over the existing building, the intent of the code to soften the visual impact of the facility will be met even with the granting of a variance.

RECOMMENDATION: It is staff's opinion that the variance requested is appropriate. Should the Board determine that the five conditions necessary for granting the variance exist, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The subject property shall be developed in general conformance with all applicable codes, including building, zoning, landscaping, and sign codes, except that compliance with Section IV-D.6.n. of the Unified Zoning Code shall not be required.
2. The subject property shall be developed in general conformance with the approved site plan and elevation drawings.
3. The applicant shall obtain all necessary permits, and the improvements shall be completed within one year of the granting of the variance, unless such time period is extended by the Board.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

STANLEY BLANKENSHIP, 946 W. 53rd N., Wichita, KS 67204, applicant We have owned this building since 1982 and it has been used as a machine shop for 30 years. This is a terrible building, and I have two options: tear the building down and replace with a new building or to sell the building and leave headaches to somebody else. It only makes sense to tear it down if I can rebuild like we have outlined in your proposal.

MARKHAM Will you have a parking lot large enough so that you can turn around in instead of backing out across 53rd Street.

BLANKENSHIP Today, no.

MARKHAM What kind of trucks are you speaking of?

BLANKENSHIP We get semi's in there two to three times a week. We build aircraft tooling which are small components we take out in pick-up trucks, and the other thing we build is hydraulic presses for the aircraft industry. Boeing, I have to admit, is my biggest customer, and these presses way up to 45,000 pounds and when we build those and ship those out, we get Belger in and they bring cranes, etc. We have parking up there today, but the parking area is not adjacent to the area to where the trucks back in for loading.

FOSTER I feel this case is similar to the one that we had in regard to raising the question whether a variance can be granted for a use. If you recall the case we had south of the airport they withdrew their case and they have not resubmitted it. I would like to find some way to abstain from voting because I

don't feel the Board has a right to consider a use variance. In other words, this to me means that anybody who doesn't like a section in the zoning regulations just comes in and files for a variance before this Board. I am not talking about the merits of this at all. I don't think the City can do this. I am looking at page 3 of the Bylaws; and I can never figure out the wording or how you abstain. It has one section that says, "Any member who abstains from voting shall be counted as a member for determining if a quorum exists." And then it goes on down here and says, "If a member is granted permission to abstain from voting they have to disassociate themselves from the Board". I think it is incorrect. I would like to know how do I abstain and under what circumstances. It even goes on, "Unless there has been a negative vote cast by such member." How do you do that and abstain?

PHILLIPS Maybe what we need to do is, before we get into the issue of the abstention, to consider is this really a use that they are asking to vary. I am not sure I agree with the fact that they are trying to change the usage here. Because it says specifically in "GC" that a machine shop is allowed. What they are wanting to vary is a condition of that use.

MILLER It is staff's opinion that this is not a use exception because a machine shop is a permitted use subject to supplementary regulations, and the supplementary regulations are the ones that require that the front of the building have the office space in it. So it is staff's opinion that what the variance that is being asked for is to vary that supplementary standard. It is not a variance to the use. It is the requirement that the front portion of the building have the office located in it.

FOSTER What page is it on?

KNEBEL It is on page 136 of the UZC, and it is directly quoted in the first paragraph of staff report.

FOSTER Since when did a variance become a condition of something? This was never a case at anytime in the past. This isn't a condition of approval of a Conditional Use or anything else.

MILLER That is what the BZA does. The BZA takes issues up that are where specific requests don't fit into the Code in a clear and concise manner; otherwise, I don't know where you would take this. There is no requirement that previous variance requests have been before another Board before they come here.

KNEBEL The use itself, the machine shop, is a permitted use by right in the General Commercial zoning district. They don't need a zone change in order to permit the use. The building that the use is required to be located in is required to have a specific design characteristic, which they are requesting to vary.

FOSTER These zoning regulations, I would stand to be corrected if so, have no list in here as to what a variance is. It doesn't list different things in here as to what a variance is first of all. We have never had a use variance like this before.

PHILLIPS I don't see this as a use variance.

FOSTER Have you ever had a case like this before?

PHILLIPS I would have to look, and we might have to go back and take inventory, and I don't know if that is really a part of what our meeting is about today. I know all of our cases haven't been about just varying dimensions and or setbacks.

MILLER On page 201, Section (G) of the UZC.

DICKGRAFE On page 201, where it talks about variances are deviations from specific regulations in this Code. Clearly this Board couldn't hear this case if the applicant was wanting to be a machine shop in a residential area where it was not an allowed use. This is an allowed use with specific conditions, that being the amount of space. That is a specific regulation in the Code. So we are not allowing a use that is not there. They are asking for a variance from the specific conditions regarding the amount of frontage or office space that it needs to have.

PHILLIPS I can recall a case, and I was the applicant, where I represented Ultra Modern Pools at Edgemoor and Kellogg where we had a similar situation. We had a condition that required 100% screening of certain activities and display space and what they wanted to do was get a variance for having a fence or having a portion of it visible. It was sales and display. So that case we brought before the Board and was under a lot of discussion, and we were fortunate that the Board found in favor of the applicant.

FOSTER There are many cases that decide whether fence is a solid fence or 50% or whatever, and that is what you were doing.

PHILLIPS I believe the variance was for outside sales which is a condition of a use.

KNEBEL This is a variance of a proportion. The Code requires that the entire frontage of the building be developed with office, display or wholesale purposes. The applicant could have requested a variance that 30% of the frontage be dedicated to that use, and it just happens that in this instance the applicant is requesting that 0% of the frontage of the building be dedicated to that use. They are asking for 100% reduction of the design dimension of the structure.

PHILLIPS I think if there are others who agree with Mr. Foster there are two ways to do this. You can clarify your abstention or consider sitting and trying to take a vote. But I think the applicant deserves some action on this application. If there is a larger issue that pertains to the definition of a Variance or the actions that this Board can take, I would say that is actually a different meeting, and we can do that at an appropriate time.

BLANKENSHIP In fact 30% of the building frontage will be office as it is now, but we didn't recognize this as an issue when we filed the application.

PHILLIPS Could you indicate where the office space is going to be.

BLANKENSHIP (indicates on plan)

PHILLIPS Basically it appears that you have offices on the entire east side of the building?

BLANKENSHIP That is correct, and the reason for that is a functional matter. If you look at the plan for the building, there is a overhang on the east side of the building about 15 feet, and that is intended to park cars in there to shade the cars in the afternoon sun in the hot summer months. It is a practical thing.

PHILLIPS How wide is your building?

BLANKENSHIP The building is 100 feet wide.

PHILLIPS So it looks like you have a bay spacing here of about 25 feet. How much office space are you talking about on the east side?

BLANKENSHIP (indicates on plan). So the building is about 12,000 square feet.

PHILLIPS So about 3,000 square feet of office.

FOSTER I think you are getting into part of this, and if Scott could reword it in terms of a reduction of the percentage in the amount of display area required, it would make it seem more like a variance. The way that it is written it isn't.

PHILLIPS So for purposes of this then can we say that point of clarification that the statement of the application can be adjusted as noted. Basically it is to permit a reduction in the amount of office space on an allowed machine shop on the property.

MARKHAM The condition of the variance that it is unique in that it is to that property which was number 8 to promote safety and not interfere with the traffic of the street so that condition is described as an accepted condition of a variance

PHILLIPS So the rewording of the request statement then if everybody agrees to that maybe we can move onto possible a motion.

ROGERS MOVES MARKHAM SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT AND THE REVISED LANGUAGE TO THE REQUEST STATEMENT AS FOLLOWS TO SECTION III.D-.6.n. OF THE UNIFIED ZONING CODE TO PERMIT A MACHINE SHOP ON PROPERTY ZONED "GC" GENERAL COMMERCIAL WITHOUT THE ENTIRE FRONTAGE OF THE GROUND FLOOR USED FOR OFFICE OR DISPLAY SPACE.

MOTION carries 5-0. The Board adopts the following resolution:

BZA RESOLUTION NO. 2004-00013

WHEREAS, Stanley and Ladene Blankenship (Owner); pursuant to Section 2.12.590.B, Code of the City of Wichita, request a variance to Section III-D.6.n. of the Unified Zoning Code to permit a machine shop on property zoned "GC" General Commercial without the entire frontage of the ground floor used for office or display space legally described as follows:

Lot 1, Block A, Goolsby's Addition, Sedgwick County, Kansas. Generally located north of 53rd Street North and east of Seneca (946 W. 53rd Street No.).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of March 23, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the subject property and the property immediately to the west are currently legal non-conforming welding/machine shop uses that do not provide office or display space along the entire frontage of the building. Both uses were established prior to the code requirement, and the use of the subject property will not change, only the building in which the use is conducted will change.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as a machine shop has existed on the property for decades without the entire frontage used for office or display, and there have been no apparent adverse affects on surrounding uses. Additionally, the new building will be developed in accordance with landscape and screening requirements not presently met by the subject property; therefore, the impact of the subject property on surrounding uses should be improved in comparison to the current development.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Code will constitute an unnecessary hardship upon the applicant, inasmuch as requiring compliance with the code will lead to development of unnecessary office and display space at significant cost in order for an existing legal non-conforming use to be continued in a new building on the same property.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as all setback requirements and easements will be met; therefore, no detrimental impacts to public health, safety, or welfare should occur. Additionally, the variance will allow the current practice of backing trucks into the subject property to cease, thus improving traffic safety in the area.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch as the intent of Section III-D.6.n. of the Unified Zoning Code is to soften the visual impact of manufacturing and welding/machine shop facilities. Since the subject property has been used in such a fashion for decades and the new building represents a significant improvement over the existing building, the intent of the code to soften the visual impact of the facility will be met even with the granting of a variance.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to Section III-D.6.n. of the Unified Zoning Code to permit a machine shop on property zoned “GC” General Commercial without the entire frontage of the ground floor used for office or display space legally described as follows:

Lot 1, Block A, Goolsby's Addition, Sedgwick County, Kansas. Generally located north of 53rd Street North and east of Seneca (946 W. 53rd Street No.).

The variance is hereby GRANTED, subject to the following conditions:

1. The subject property shall be developed in general conformance with all applicable codes, including building, zoning, landscaping, and sign codes, except that only 30 percent of the frontage of the ground floor along 53rd Street North shall be required to be used for office space, display or wholesale or retail uses.
2. The subject property shall be developed in general conformance with the approved site plan and elevation drawings.
3. The applicant shall obtain all necessary permits, and the improvements shall be completed within one year of the granting of the variance, unless such time period is extended by the Board.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 23rd DAY of MARCH, 2004.

PHILLIPS Item 3.

HERB SHANER, OCI, Item 3, Case No. BZA2003-10 –Variance to Section III-D.7.e. (5) of the Unified Zoning Code to permit a 15-foot street side setback for an accessory structure on a key lot, generally located at the northeast corner of Keith St. and Keith Ct. (1970 Keith Ct.). They are in compliance and all conditions have been met.

Case No. BZA2003-11, Zoning Adjustment to allow parking in the front setback on property zoned “SF-5” Single-Family Residential. Located at 866 N Socora. They are in compliance.

Case NO. BZA2003-58, Variance to Section 24.04.191 of the Sign Code to increase the permitted size of an identification sign along an arterial street from 48 square feet to 125 square feet on property zoned “B” Multi-Family and “LI” Limited Industrial, generally located south of Central and east of Seneca. They are in compliance.

FOSTER Any more information about the case that we had the last time in regard to the side yard?

SHANER Up on Madison? No, we haven’t heard a thing.

FOSTER What would be the next step? Provide him with a chainsaw or what?

DICKGRAFE I can notify Kurt Schroeder and let him know about that situation.

FOSTER I would like when we do have another regular meeting and not a meeting for this, but I am very honest and sincere about that I do not know how to abstain in reading this. There are words here that to me do not make sense.

PHILLIPS I have gone through that myself and hopefully it is something you can work with Sharon Dickgrafe. If Sharon feels it is something that we need to clarify with the Board, I think the Board should bring it back and hear it.

FOSTER I think perhaps that when we have the time that perhaps we should go over this again.

DICKGRAFE If you are planning on abstaining, then you can't participate in the discussions. So if you planned to abstain, you would have needed to do that before the case was presented to the Board. What I believe these Bylaws are saying is that if you are not granted permission to abstain, and you don't cast a negative vote, then your vote will be cast in the affirmative. I frankly think that makes sense from the standpoint that if you think you have a conflict or a basis to abstain, and you don't affirmatively state that early enough in the proceeding, then in all fairness to the applicant your vote should be counted in the affirmative.

PHILLIPS I think I know how to abstain. I think what is the impact is my bigger concern and question that I have. My own opinion is that I didn't think abstaining from the vote was the appropriate thing to do. If you had a question about how it was written, then I would like to have had that stated more clearly. I think the abstaining after the fact wasn't the appropriate action.

DICKGRAFE I would agree with that. If you were going to abstain because of a conflict or you don't think that you can appropriately hear the case, then you abstain. If you don't believe that this Board has the authority to do that or to do the action, then I think the appropriate course is to vote "no".

FOSTER There is another side of this, and until you in all fairness hear something, you don't know whether you are going to abstain or not. I don't have a conflict of interest, or any obvious problem other than trying to hear what the problem was, and I never heard anything that convinced me that this was a variance. I had to hear it to do it.

DICKGRAFE I understand that, but I think you come back to the point that what you were wanting to do was not to abstain from voting. It was to vote "no". That this Board did not have the authority to grant the variance, and I think you have the right to do that as a member.

PHILLIPS I see it as that Bickley. You had another issue other than the merits of the case, and that was obviously how the request statement was written. I think maybe a substitute motion or a motion to question the wording on the statement and correct that to make sure it is applicable. I can see that happening. Maybe we do need some clarification on some of these things. This isn't the first time that this has happened, and if we see this thing happening in the future, we should know how to deal with it.

FOSTER I think we need the wording to deal with it. If I had voted "no" and we had four people hear it wouldn't have passed. But if I would have abstained then it could have been counted maybe as the affirmative vote.

PHILLIPS That probably was not what you were looking for either.

MILLER Bickley, part of the problem is though that you have on more than one occasion have been unwilling to accept staff's opinion on how cases should be handled, and we confer with the Law Department and get our best opinion on how to do this, and certainly as a member, you have that right, but at some point we have to process these cases, one way or another, and you are going to have to do whatever you have to do. The other Board members are willing to accept staff's recommendation, but you don't seem interested in doing that on some of these, and that is something we need to work out.

PHILLIPS I think maybe if any Board member has a problem, I think what we should do, in all fairness to the applicant, is to raise that issue as quickly as we can and try and get Sharon's feedback because that is what she is here for. Hopefully, not only to make sure we do things legally, but hopefully to define things properly for us. Next time we meet and the Chair or Vice-Chair is here, if there is something that needs scheduled for that or discuss that as a separate item. Bickley, if you want it listed

as an Agenda and get it on the next meeting, I think that is really where you started with this. I will remain and have some discussion on that.

FOSTER The problem is that I honestly do not understand how to do it, and the wording of it the way it is worded. We get new members periodically, and do they understand that?

PHILLIPS I think for everybody's benefit we ought to discuss it. Maybe, Scott we can put that after our report from OCI, and the next meeting we can spend 10-20 minutes getting some clarification.

FOSTER Would the Board members read the Bylaws, page 3, that section, and see if they understand it?

Meeting adjourned 2:10 p.m.